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Federal Communications Commission

DA-96-1895

DISPATCHED BY

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 95-122
Table of Allotments,)	RM-8668
FM Broadcast Stations.)	RM-8712
(Lexington, Henry and Parker's)	RM-8713
Crossroads, Tennessee) ¹)	
)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 15, 1996

Released: November 22, 1996

By the Chief, Allocations Branch:

1. At the request of Floriplex, Inc., the Commission has before it the Notice of Proposed Rule Making, 10 FCC Rcd 810, (1995), proposing the allotment of Channel 243A to Lexington, Tennessee, as the community's second local commercial FM service. Comments were filed by the petitioner reiterating its intention to apply for the channel, if allotted. Crossroads Broadcasting ("Crossroads") and Richard Bennett ("Bennett") filed counterproposals.² Petitioner and Bennett filed reply comments. In response to the counterproposals, petitioner and Bennett filed further reply comments. Bennett also filed a supplement to his reply comments.³

2. In response to the Notice, Crossroads filed a counterproposal requesting the allotment of Channel 243A to Parker's Crossroads, Tennessee. In support of its proposal, Crossroads states that Parker's Crossroads is an incorporated community with a population of 161 persons. It is located at the intersection of Interstate 40 and State Route 22 in Henderson County, Tennessee. In addition, Parker's Crossroads is managed by a mayor and board of aldermen form of government and maintains a city park. Crossroads claims that the community is the home to a

¹ The communities of Henry and Parker's Crossroads, Tennessee, have been added to the caption.

² Public Notice of the counterproposals were given October 18, 1995, Report No. 2105.

³ Bennett's counsel filed a supplement to his further reply comments noting that it had initially filed further reply comments bearing a facsimile signature. Thus, we will accept the supplement since it serves to supply an original signature of Bennett's "Declaration."

number businesses, civic clubs, and churches. The Crossroads Possum Club and the Beaver Ruritan Club are also located in Parker's Crossroads along with an historic Civil War battle tour. Crossroads maintains that, although small, Parker's Crossroads qualifies as a community for allotment purposes.

3. In his counterproposal, Bennett requests the allotment of Channel 243A to Henry, Tennessee, as the community's first local aural transmission service. He states that Henry has a population of 317 persons and is an incorporated community. In addition, the community has a Mayor/Board of Aldermen form of government, a U.S. Post Office and its own zip code. Bennett states that Henry also provides essential services to its citizens through its own police force, fire department and water system. Henry has a number of businesses, both retail and industrial, as well as churches and civic organizations. Bennett submits that two schools are located in Henry: Henry Elementary, a public school serving grades K-8, and Lakeside Christian Academy, a private school. Bennett believes that the requested allotment of Channel 243A to Henry is entitled to be accorded a higher priority than the provision of a third local service to Lexington under the Commission's established allotment criteria since it would provide the community with its first local service.

4. In response, petitioner states that neither Parker's Crossroads (population 161) nor Henry (population 317) are sufficiently sizable, distinct places to justify allotment of Channel 243A in lieu of allotting that channel to Lexington.⁴ Petitioner argues that Lexington's population is 36 times the population of Parker's Crossroads and 18 times the population of Henry. It notes that Parker's Crossroads consists of an intersection of two highways where approximately 161 persons reside. In addition, petitioner states that many of the businesses cited in the Crossroad's counterproposal are simply gas stations, convenience stores and motels providing services to Interstate 40 travelers. Petitioner believes that Bennett's counterproposal is similarly deficient, noting that Bennett has failed to specifically list retail or industrial businesses which could provide an adequate economic base to support an FM radio station. It further notes that a station licensed to Henry will be heavily dependent on revenues from nearby communities. Moreover, with respect to size and importance, petitioner argues that Lexington dwarfs both Parker's Crossroads and Henry. Petitioner notes that Lexington is a thriving, well established community of nearly 6,000 people which can both support a new station and benefit from the competition. Nevertheless, petitioner states that if Henry is found to be a community for allotment purposes, it submits that Channel 284A is available for allotment to Henry.

5. Bennett filed reply comments stating that contrary to petitioner's claims, Henry is a substantial and distinct community entitled to a first local FM service. Bennett further notes that Henry has a population almost twice that of Parker's Crossroads and enjoys greater indicia of

⁴ Petitioner alleges that Crossroads' counterproposal may have been filed by an existing licensee to impede the implementation of a competing FM service to Lexington. Petitioner bases its allegation on the mere fact that the law firm representing Crossroads also represents the licensee of Stations WDXL(AM) and WZLT(FM), Lexington, Tennessee. We find this allegation to be speculative, and we will not address it herein.

community identity and, thus the allotment of Channel 243A to Henry outweighs the proposal to allot the channel to Parker's Crossroads. Bennett also believes the allotment of Channel 243A to Henry, as the community's first local aural service, is preferred over the proposed allotment of a third local service to Lexington. Finally, Bennett opposes the allotment of an alternate channel to Henry. Bennett states that the area that is theoretically available for the location of a transmitter site capable of providing city grade coverage to Henry is extremely small. Bennett argues that petitioner has failed to demonstrate the availability of any land sufficient to serve as a transmitter site for Channel 284A at Henry. Bennett urges that based on the information presented in support of his proposal, the allotment of Channel 243A to Henry should prevail in this proceeding.

Discussion

6. To begin with, we will address petitioner's assertions regarding Parker's Crossroads' community status and Henry's size. Petitioner states that Parker's Crossroads is not a community for allotment purposes, noting that many of the businesses cited by Crossroads merely provide services to interstate travelers. The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982). Parker's Crossroads exhibits this indicia for community status. It is an incorporated community with a local government and a number of local businesses. Likewise, Henry also meets the requirement for community status as it is incorporated. Henry also has a local government that provides essential services to its residents. It has a number of businesses, churches, civic organizations and two schools, one of which identifies itself with the community. While petitioner contends that Bennett has failed to specifically list retail or industrial businesses which could provide an adequate economic base to support an FM radio station licensed to serve Henry, the Commission has never established a minimum amount of commercial activity necessary to qualify a community for an FM radio allotment.

7. Petitioner also notes that Lexington dwarfs both Parker's Crossroads and Henry in size and importance. It claims the public interest would not be served by allotting a channel to a tiny locality at the expense of a much larger community. While not clearly stated, it appears petitioner believes that in situations where a conflict exists between a small community and a larger community, the smaller community should not be given a Section 307(B) preference, thereby implying the community is a "quiet village." However, in the "quiet village" cases, two additional circumstances are often present. First, the communities are situated close enough so that service can be provided to both communities regardless of where the channel is allotted, and second, the larger community seeks the allotment in order to provide a first competitive outlet. See Scranton, and Surfside Beach, South Carolina, 3 FCC Rcd 2798 (1988). Since both the Parker's Crossroads and Henry proposals would provide a first local service while Lexington's proposal would provide a fourth radio service⁵, we find using the quiet village model in the

⁵ Stations WDXL(AM), WIGH(FM) and WZLT(FM) are licensed to serve Lexington.

context of this proceeding is not applicable.

8. Since we have determined that both communities, Parker's Crossroads and Henry, are communities for allotment purposes, we now have before us three mutually exclusive proposals involving Lexington, Henry and Parker's Crossroads, Tennessee. We have also determined that alternate channels are not available to resolve all three of the conflicts. However Channel 284A can be allotted to Henry.⁶ Thus, we must choose between the conflicting proposals and base our decision on the following allotment criteria as set forth in Revision of FM Policies and Procedures; which are:

- (1) First full-time aural service;
- (2) second full-time aural service;
- (3) first local service;
- (4) other public interest matters.

[(Co-Equal weight given to priorities (2) and (3).]

9. In examining the conflicting proposals for Lexington, Henry and Parker's Crossroads, we find the allotment of Class A channels to Parker's Crossroads and Henry would not provide any first or second aural service but would provide a first local service (priority three) to their respective communities. The allotment of Channel 243A to Lexington would not meet any of the first three prioritized categories enumerated above, but would provide a fourth local aural service to the community (priority four). Since the allotments of Channel 243A to Parker's Crossroads and Channel 284A to Henry will trigger a higher priority than that of Lexington, we find that they should be favored.

10. In consideration of the above, we believe that the public interest would be served by providing Henry and Parker's Crossroads with their first local aural services. Although Bennett argues for the allotment of Channel 243A to Henry, we believe the allotment of Channel 284A

⁶ We note that Bennett has filed comments stating that Channel 284A cannot be allotted to Henry at the Commission's proposed site because of the unavailability of a suitable transmitter site. Bennett claims that the area that would theoretically be available for the location of a transmitter site capable of providing city grade service and line of sight coverage to Henry is extremely small and is bisected by a railroad, as well as by high voltage power lines. We find Bennett's objection to the consideration of alternate Channel 284A at Henry to be unfounded. While such matters are generally considered at the application stage, see Pinckneyville, Illinois, 30 R.R. 2d 1344, 1347 (1974) and Key West, Florida, 3 FCC Rcd 6433 (1988), we have examined the nature of the land available because Bennett has alleged that the area in question is too small. Our engineering analysis indicates that there are two areas of reasonable size that could accommodate a radio transmitter tower that appear to be devoid any railroad or high voltage power lines. In addition, we have also performed a terrain profile study and confirmed that at the Commission's alternate site, a facility operating on Channel 284A could provide a city grade signal to Henry without terrain shadowing problems.

would best serve the public interest, since it would eliminate the technical conflict with the new allotment at Parker's Crossroads. Channel 284A can be allotted to Henry with a site restriction of 15.6 kilometers (9.7 miles) southeast to avoid short-spacing conflicts with Station WKWT(FM), Channel 285A, Union City, Tennessee, and Station WTNV(FM), Channel 281C1, Jackson, Tennessee.⁷ Channel 243A can be allotted to Parker's Crossroads in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.⁸

11. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective January 6, 1997, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Parker's Crossroads, Tennessee	243A
Henry, Tennessee	284A

12. The window period for filing applications will open for Channel 243A at Parker's Crossroads, Tennessee, and Channel 284A at Henry, Tennessee, on January 6, 1997, and close on February 6, 1997.

13. IT IS FURTHER ORDERED, That the petition for Rule Making filed by Floriplex, Inc. (RM-8668) requesting the allotment of Channel 243A to Lexington, Tennessee, IS DENIED.

14. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

⁷ The coordinates for Channel 284A at Henry are North Latitude 36-08-07 and West Longitude 88-16-02.

⁸ The coordinates for Channel 243A at Parker's Crossroads are North Latitude 35-47-37 and West Longitude 88-23-27.

15. For further information concerning this proceeding, contact
Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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